IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH, AT JAIPUR

S. B. CRIMINAL MISC. PETITION NO. 721/1997

LALA & OTHERS
v
STATE OF RAJASTHAN

Date of Judgment: **JULY 12, 2007**

Hon'ble Mr. Justice R. S. Chauhan

Mr. S.R. Surana for the petitioner.
Mr. B.K. Sharma, Public Prosecutor.
Mr. N.S. Shekhawat for the complainant.

By Court:

The petitioners have challenged the order dated 29.5.97 passed by the Civil Judge (Junior Division) & Judicial Magistrate, First Class, Bassi, District Jaipur whereby while rejecting negative F.R. filed by the police, the learned Magistrate has taken cognizance against the petitioners for offences under Sections 147, 452, 427, 323 read with Section 149 I.P.C. and under Section 3(1)(v)(x)(xi) of SC/ST (Prevention of Atrocities) Act.

The tug of war between the complainant, Badri Narain and the petitioners is over a piece of land measuring

23' x 21', total measuring 53 sq. yards. According to both the parties the said disputed property is in their respective possession. According to the complainant on 14.1.95 when his wife Smt. Nathi entered the disputed property, the petitioners came armed with lathies and assaulted his wife and called her names with regard to her Scheduled Caste status. On the basis of this report submitted by the complainant before the Police Station, Bassi, a formal FIR No. 11/95 was chalked out. However, after thorough a investigation, the police submitted a negative F.R. But after hearing the complainant and after perusal of the negative F.R. vide order dated 25.9.97, the learned Magistrate took cognizance against the petitioners as mentioned above. Hence, this petition before this court.

Mr. S.R. Surana, the learned counsel for the petitioners, has vehemently argued that a tug of war is going on between the parties ever since 1994. So far, three FIRs have been lodged by the complainant against the petitioners: firstly, on 9.7.94, for offence under Sections 147, 447, 323, 427, 354 and 379 IPC read with Section 3/5, sub-clause 10 of SC/ST Act. The second FIR was lodged on 14.1.95 which is

the subject matter before this court. The third FIR was lodged on 17.12.95, registered as FIR No. 853/95, for almost the same set of offences. In the criminal case arising out of first FIR, vide order dated 1.12.95, the learned trial court had acquitted the petitioners. The said acquittal order has not been challenged by the complainant. Therefore, the said acquittal order has achieved finality. Moreover, the third FIR was challenged before this court. Vide order dated 28.11.97, this court quashed the said FIR. Therefore, the learned counsel has argued that the second FIR is also motivated in spirit and has been lodged for taking personal vengeance on the petitioners. In order to support his contention, he has drawn our attention to the fact that the petitioners were acquitted vide order dated 12.10.95 and the third FIR was lodged on 17.12.95. Since the present FIR is motivated, the criminal proceedings tentamounts to abuse of the process of the court and of the law. He has further contended that the dispute with regard to the property has been resolved vide order dated 26.12.92 passed by the Addl. Collector (First), Jaipur and ever since the year 2001 both the parties are living in peace.

On the other hand, Mr. N. S. Shekhawat, learned counsel for the complainant, and the learned Public Prosecutor have supported the cognizance order dated 25.9.97.

We have heard all the counsels for the parties and have perused the different orders placed before us by the counsels.

A bare perusal of the facts narrated above clearly reveal that both the parties have been fighting over the same bone of contention. The first FIR lodged by the complainant has resulted in the acquittal of the petitioners – an acquittal never challenged by the complainant. Even the third FIR has been quashed by this court vide order dated 28.11.97. The property dispute presently stands resolved vide order dated 26.12.2001. According to both the parties no further dispute has arisen and no further criminal cases have been filed by the parties against each other. Therefore, it seems that both the parties have learn to peacefully co-exist. Considering the fate of the other two FIRs and keeping in mind that judicial disciple has to be maintained, also considering the peaceful co-

existence of the parties, this court is inclined to quash the order dated 25.9.97. In case the criminal proceeding is allowed to continue the chances are that the dispute will again errupt between the parties. Moreover, a narration of the facts above clearly shows that even the second FIR was lodged for wrecking personal vengeance on the petitioners.

The Hon'ble Supreme Court in the case of State of Haryana Vs. Bhajan Lal (1992 Supp.(1) SCC 335) has clearly held that in case the FIR is vitiated by ulterior motive or has been lodged for wrecking vengeance, the High Court can quash the same in its jurisdiction under Section 482 Cr.P.C. Since the FIR has been lodged with ulterior motive, the continuation of the criminal proceedings would certainly tentamounts to abuse of the process of the court and of law.

In the result, this petition is allowed. The cognizance order dated 25.9.97 is hereby quashed and set aside.

(R.S. CHAUHAN) J.

MRG.